

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
CEDAR BROOK CONTRACTING CORP.	:	DETERMINATION
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period December 1, 1979	:	
through May 31, 1983.	:	

Petitioner, Cedar Brook Contracting Corp., 13 Rockwood Avenue, Massapequa, New York 11758, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1979 through May 31, 1983 (File No. 801363).

A hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 21, 1986 at 1:15 P.M., was continued before the same Hearing Officer at the same location on June 8, 1987 at 1:45 P.M. and was continued to conclusion before the same Hearing Officer at the same location on September 16, 1987 at 9:45 A.M., with all briefs to be submitted by February 22, 1988. Petitioner appeared by Cunningham & Lee, Esqs. (Gerard Cunningham, Esq., of counsel). The Audit Division appeared on the first two hearing dates by John P. Dugan, Esq. (Michael Gitter, Esq., of counsel), and on the third hearing date by William F. Collins, Esq. (Michael Gitter, Esq., of counsel).

ISSUES

I. Whether taxable rentals of certain heavy equipment took place between petitioner and B.A.H.L. Industries, Inc.

II. Whether the Audit Division's resort to test period auditing methodology was proper in determining petitioner's tax liability.

III. Whether petitioner has established its entitlement to a refund of certain use tax (plus interest) calculated as due upon audit and paid by petitioner on November 29, 1983 prior to issuance of any notice of determination and demand therefor.

FINDINGS OF FACT

1. On March 20, 1984, following a field audit, the Audit Division issued to petitioner, Cedar Brook Contracting Corp. ("Cedar Brook"), a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period December 1, 1979 through May 31, 1983 in the amount of \$237,247.71, plus interest. Cedar Brook, by its president, Leon G. DeBremont, had previously executed a consent extending the period of limitation for assessment of sales and use taxes allowing assessment for the period December 1, 1979 through November 30, 1980 to be made at any time on or before March 20, 1984.

2. Cedar Brook is a contracting firm involved in the demolition of buildings, site excavation, and trucking and hauling of debris, dirt and sand. Its principal business is the excavation and trucking of covering materials to municipal landfill facilities. Cedar Brook owns no heavy equipment of its own.

3. Upon commencing the audit (in May of 1983), the auditor requested records from Cedar Brook including, specifically, Cedar Brook's general ledger, purchase journal, cash disbursements journal, cash receipts journal, sales tax returns, income tax returns, purchase invoices and sales invoices. In turn, Cedar Brook supplied all of these requested documents, except that Cedar Brook did not produce any rental (purchase) invoices or lease agreements pertaining to its relationship with B.A.H.L. Industries, Inc. ("B.A.H.L."), and its use of certain heavy equipment owned by B.A.H.L., as described hereinafter.

4. The auditor deemed Cedar Brook's books and records to be inadequate for purposes of verifying its sales tax liability as reported. This determination was based, in part, upon a conclusion that Cedar Brook had no "internal control" over its recordkeeping functions, in that there was "no separation of duties pertaining to recording and depositing of revenues". More specifically, the auditor asserted that all receipts were handled entirely by one bookkeeper. The auditor's conclusion of recordkeeping inadequacy was also based, in part, upon the noted lack of rental invoices between Cedar Brook and B.A.H.L.

5. Upon this conclusion that Cedar Brook's books and records were inadequate, the auditor decided to perform a test period audit and requested specific records, including invoices, for the months of June, July and August 1982. Petitioner did not either specifically object or agree to the use of a test period and, via its bookkeepers, provided its records for the noted three-month test period. Gross sales as shown on Cedar Brook's records, and as reported on its Federal (corporation) income tax returns and its sales and use tax returns (Forms ST-100), were reviewed, reconciled and accepted as reported on such returns. Cedar Brook's sales tax accrual account was reviewed and all taxes accrued were deemed properly paid. Fixed asset acquisitions were analyzed and all tax was considered to have been properly paid thereon.

6. The auditor also reviewed Cedar Brook's maintenance expense account, utilizing its books and related purchase invoices for each of two (separate) three-month test periods. The two test periods here involved were the previously noted June, July and August 1982 period, as well as the months of March, April and May 1983. The result of this testing was the determination of a 22.1% error rate in the payment of tax on maintenance expenses. Applying this error percentage to petitioner's maintenance expense account total for the entire audit period resulted in a finding of use tax due on maintenance expenses in the amount of \$1,785.03. Prior to the issuance of any notice of determination, petitioner agreed to this finding of use tax due and, on November 29, 1983 petitioner executed a consent to and paid such amount of tax, plus interest (total payment of \$2,383.72). Petitioner alleged, and the auditor admitted at hearing, that invoices in support of petitioner's maintenance expenses were available for the entire audit period.

7. The auditor also concluded that certain heavy equipment owned by B.A.H.L. and used by petitioner was in fact rented by petitioner from B.A.H.L. The type of equipment involved included dump trucks, tractor trailers, cranes, bulldozers, etc. The auditor calculated tax due on 100 percent of the amount shown as "equipment rental" per petitioner's general ledger, which tax constitutes the entire amount assessed via the March 20, 1984 notice of determination (see____, Finding of Fact "1").

8. In calculating the amount of the March 20, 1984 assessment based on alleged equipment rental, the auditor noted the category "Equipment Rental" in Cedar Brook's general ledger as well as the term "rental expense" on petitioner's Federal (corporation) income tax returns. During the three-month test period spanning June, July and August of 1982, the auditor found no lease or rental agreements, invoices, specific billing documents, or other documents flowing between Cedar Brook and B.A.H.L. with respect to Cedar Brook's use of B.A.H.L.'s heavy equipment. The auditor reviewed petitioner's cash disbursements journal and its purchases journal for this three-month test period spanning June, July and August of 1982. The results of this review may be broken down into two segments as follows:

- a) The auditor's review of petitioner's purchases journal for the noted three-month period revealed payments of comparatively small amounts to several named individuals under the heading "equipment rental" in the aggregate amount of \$8,853.23. Invoices for each of such payments were available and were examined. Tax was not shown as paid on any of such invoices.
- b) The auditor reviewed petitioner's cash disbursements journal for the noted three-month period, finding nine payments under the heading "loans and exchanges" in the aggregate amount of \$140,000.00.¹ There were no invoices or other supporting documents for any of these payments to B.A.H.L. and to DeBremont Industries.

9. Upon completing the above test period review, the auditor concluded that each of the amounts shown, and the transactions involved, represented payments by Cedar Brook for the rental of heavy equipment upon which no tax had been paid. The auditor used this test period analysis to conclude and establish a 100% disallowance rate (i.e., the auditor disallowed nontaxable status to 100% of the test period payment amounts believed to represent equipment rentals). The auditor then took the dollar amount listed as equipment rental from petitioner's general ledger for the audit period (\$3,328,584.19), and subjected the entire amount to tax, thereby calculating the \$237,247.71 amount of the assessed deficiency at issue herein.

¹The individual dates, amounts and payees are as follows:

<u>Date</u>	<u>Amount</u>	<u>Payee</u>
6/9/82	\$ 20,000	(to B.A.H.L.)
6/22/82	20,000	(to B.A.H.L.)
6/26/82	20,000	(to B.A.H.L.)
7/8/82	20,000	(to B.A.H.L.)
7/18/82	20,000	(to B.A.H.L.)
7/28/82	20,000	(to B.A.H.L.)
7/30/82	3,000	(to DeBremont Ind.)
8/6/82	15,000	(to B.A.H.L.)
8/27/82	<u>2,000</u>	(to DeBremont Ind.)
Total	<u>\$140,000</u>	

10. The payments between Cedar Brook and B.A.H.L. were (as shown) in even dollar amounts (see, Finding of Fact "8-b", footnote "1"; see also Schedule "A" appended hereto). Said payments were made periodically by Cedar Brook in amounts sufficient to cover B.A.H.L.'s expenses including license fees, vehicle registration fees, taxes and, most significantly, the amortization of notes payable covering the purchase costs of the various pieces of heavy equipment owned by B.A.H.L. There was no relationship in the calculation of the amounts paid to B.A.H.L. vis-a-vis the particular pieces of equipment used, the hours or places of such use, or the frequency of use. All of B.A.H.L.'s notes payable financing the heavy equipment were co-signed by Cedar Brook, and also by Leon DeBremont, individually.

11. The payments made on July 30, 1982 and August 27, 1982 by Cedar Brook to DeBremont Industries (see Footnote "1") were alleged by petitioner and admitted by the Audit Division at hearing to represent rental payments by Cedar Brook to DeBremont Industries for Cedar Brook's lease of real estate housing its offices at 13 Rockwood Avenue, Massapequa, New York.

12. Cedar Brook and B.A.H.L. are commonly owned corporations, each of whose sole shareholder and president is Leon DeBremont. It was admitted that B.A.H.L.'s equipment was used by Cedar Brook in carrying out Cedar Brook's contracts, that the specific time, place and manner of such equipment's use was directed and controlled by Cedar Brook and that the equipment was operated (driven) by Cedar Brook's employees.

13. Cedar Brook utilized a fiscal year ending on November 30, while B.A.H.L. utilized a fiscal year ending August 31. Cedar Brook employed a number of bookkeepers, as well as a head bookkeeper. Combined financial statements for Cedar Brook and B.A.H.L. as submitted in evidence reflect, inter alia, the following information with respect to the category of expense labeled "equipment rental":

<u>FYE</u>	<u>Cedar Brook</u>	<u>B.A.H.L.</u>	<u>Elimination</u>	<u>Net of Elimination</u>
11/30/80	-0-	-0-	-0-	\$275,507.00
11/30/81	-0-	-0-	-0-	279,591.00
11/30/82	\$ 877,543.00	-0-	\$814,900.00	62,643.00
11/30/83	1,152,360.00	-0-	935,029.00	217,331.00

14. The auditor, as noted, found the heading "equipment rental" in petitioner's general ledger and traced the postings therefrom back to petitioner's purchases journal (payments to various individually named parties under the account heading "equipment rental") and to its cash disbursements journal (payments to B.A.H.L. and to DeBremont Industries under the account heading "loans and exchanges") for the test period. As noted, invoices existed for the former but not for the latter transactions. In fact, there is no dispute that invoices for the entire audit period were maintained and available for all payments to the various individually named parties, but that no invoices were ever created with respect to any payments to B.A.H.L. or to DeBremont Industries.

15. The loans and exchanges account in petitioner's cash disbursements journal was closed out at year's end to the equipment rental account in the general ledger. Petitioner explained that the payments to B.A.H.L. (and to DeBremont Industries) were not reflected in its purchases journal because such payments were viewed as transfers of funds and not as rentals of equipment. Petitioner also noted that the nature of the payments would not give rise to the submission of a bill or invoice from B.A.H.L. (or DeBremont Industries) to Cedar Brook, and thus would require

no entry in the purchases journal. Petitioner noted that comparable "no bill" examples (situations where no invoices existed and payments were directly recorded in the cash disbursements journal with no entry in the purchases journal) would include, inter alia, donations to charity and rent payments.

16. B.A.H.L.'s only income was derived from payments received from petitioner, together with a small amount of interest earned on certificates of deposit. According to petitioner's accountant's testimony, B.A.H.L. was formed to "purchase and own equipment", with a second purpose described as "maybe to engage in joint venture activities and/or subcontracting activities". Mr. DeBremont described his view of the two corporate entities as being "one and the same". According to testimony, Cedar Brook used B.A.H.L.'s equipment for "no consideration".

17. The individuals named in the purchases journal and on the related test period invoices (see ____, Finding of Fact "8-a") delivered dirt in their own trucks with their own drivers, to various Cedar Brook job sites including, primarily, the Bethpage Municipal Landfill in the Town of Oyster Bay, New York. In essence, each of these transactions represents a payment to an individual trucker or trucking firm for the delivery of dirt. Cedar Brook paid these individuals on the basis of the amount of dirt transported (i.e. ____, by the cubic yard).

18. B.A.H.L. allegedly paid sales tax on its purchases of some but not all of the heavy equipment. No further specifics were provided on this issue. Likewise Mr. DeBremont's reason for using two separate corporate entities in the fashion herein described was not explained at the hearing with any degree of specificity.

SUMMARY OF THE PARTIES' POSITIONS

19. Petitioner maintains that no rental occurred between Cedar Brook and B.A.H.L., and that the two entities in essence operated as a joint venture. Thus, petitioner argues no rental invoices or lease agreements would exist due to the fact that no rental transactions ever occurred. The transactions deemed "equipment rental" on audit were claimed by petitioner to have been simply recordings of payments to B.A.H.L. so it could pay for equipment that was used by Cedar Brook, and that such payments represented a division of profits from the alleged Cedar Brook/B.A.H.L. joint venture. Additionally, petitioner asserts that the auditor's use of a test period was not consented to by petitioner. It is maintained that completely sufficient books, records and supporting documents were supplied to the auditor, thus precluding resort to test period methodology in any auditing of Cedar Brook. Further, in this vein, petitioner asserts that the use tax paid on November 29, 1983 should be refunded to petitioner, inasmuch as such tax was determined to be due through the use of the same allegedly erroneous test period auditing methodology.

20. The Audit Division asserts, by contrast, that the monies transferred by Cedar Brook to B.A.H.L. constituted rental payments for the rental and use of B.A.H.L.'s equipment. The Audit Division maintains that such transactions are taxable, unless the contrary is proven, and that such transactions should have been documented by rental contracts or, at the least, invoices on payment. The Audit Division maintains that petitioner's failure to document the alleged equipment rentals with invoices or otherwise created an insufficiency of documents for audit purposes, thus allowing the use of test period auditing methodologies. Additionally, the Audit Division contends that the lack of "internal control", as described, supports the use of test period auditing techniques. Finally, the Audit Division asserts that petitioner's claim for refund is time barred pursuant to Tax Law § 1139(a)(ii).

CONCLUSIONS OF LAW

A. Section 1138(a)(1) of the Tax Law provides:

"If a return required by this article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the tax commission from such information as may be available. If necessary, the tax may be estimated on the basis of external indices, such as stock on hand, purchases, rental paid, number of rooms...or other factors."

B. It is well settled that where a taxpayer does not maintain and/or make available such records, including source documents, as will allow establishment of an audit trail and enable verification of the accuracy of returns filed, the Audit Division may resort to indirect audit methodologies in carrying out its audit function. However, resort to indirect audit methodologies, including test period procedures, in computing tax liability must be founded upon an insufficiency of recordkeeping which makes it virtually impossible to verify taxable sales receipts and conduct a complete audit. If records are available from which the exact amount of tax can be determined, estimate procedures that are adopted by the Audit Division become arbitrary and capricious and lack a rational basis (Matter of Chartair, Inc. v. State Tax Commission, 65 AD2d 44).

C. In this case, the Audit Division justifies its resort to indirect auditing methodology (the test period analysis) upon two grounds: a) the asserted lack of internal control and b) the lack of documentation relating to the payments to B.A.H.L. and DeBremont Industries, Inc. The "lack of internal control" basis herein asserted by the auditor does not support a conclusion that petitioner's books and records were inadequate. In general terms, "internal control" refers to those checks or safeguards within the structure of an accounting system designed and included to avoid the existence of incompatible accounting functions (e.g., receiving, recording and depositing of revenues). The aim of a system of internal control is to avoid perpetration and concealment of irregularities and lend credence to the reliability of accounting records and information flowing therefrom (see generally, Taylor and Glezen, Auditing: Integrated Concepts and Procedures, at 214 et seq [3d ed 1985]). Here, the auditor's conclusion of inadequacy stems from her belief that only one employee (bookkeeper) handled all of petitioner's receipts of cash as well as the recording and depositing thereof. However, this conclusion was refuted by the fact that petitioner employed more than one bookkeeper (in fact several) to handle these functions. Moreover, the issue of internal control plays no role in the determination of whether there existed sufficient records, including source documents, from which an audit trail could be established thereby leading to verification of petitioner's tax liability and an assessment of the accuracy of petitioner's sales tax returns. Finally, it is noteworthy that while asserting a lack of internal control, specifically with respect to the reporting and recording of revenues, the auditor took the apparently inconsistent position of accepting petitioner's gross sales as reported.

D. The second basis upon which insufficiency of recordkeeping is alleged concerns the lack of invoices or other documents between Cedar Brook and B.A.H.L. Preliminarily it should be noted that invoices were available with respect to the transactions between Cedar Brook and the various named individuals utilized by petitioner to deliver dirt (see Findings of Fact "8-a", "14" and "17"). Thus, the auditor improperly utilized a test period in determining tax liability on these latter transactions with various named individuals. Accordingly, any amount of tax due on such transactions must be limited to tax due on those invoices actually reviewed for the test

period (\$8,853.23; see, Finding of Fact "8-a"). With respect to such transactions, however, petitioner has established that they represented the hiring of individual truckers or trucking firms to haul and deliver dirt in their own vehicles with their own drivers on a per cubic yard basis for petitioner. Such an arrangement, wherein dominion and control over the use of the vehicles does not rest with petitioner, constitutes a transportation service exempt from tax (see____, Matter of Alascon, Inc., State Tax Commn., March 27, 1986).

E. With respect to the B.A.H.L. (and DeBremont Industries) transactions, the auditor found the same by tracing posting amounts from the general ledger account (under the heading "equipment rental") back to Cedar Brook's cash disbursements journal (finding the same under the heading "loans and exchanges"). In turn, the auditor found no invoices or other supporting documents relating to these amounts during the three-month period reviewed and, in fact, no such documents existed or were ever created for any such transactions during the entire audit period. Petitioner's explanation for the lack of invoices as set forth in Finding of Fact "15" is plausible and not unreasonable. However, based on the facts that there were no invoices or other documentation supporting these payments found by the auditor, that Cedar Brook owned no equipment with which to carry out its contracts, and that Cedar Brook used the terms "equipment rental" in its general ledger and "rental expense" on its tax returns, it was not unreasonable for the auditor to have relied upon a test period and its results in concluding that 100 percent of the payments to B.A.H.L. were taxable rental payments for use of B.A.H.L.'s heavy equipment.

F. The facts in this matter presented at hearing reveal that the auditor's disallowance of nontaxable status to 100 percent of the total amount listed as equipment rental in the general ledger was erroneous, in that such total amount includes not only the amounts paid to B.A.H.L., but also includes the amounts paid to DeBremont Industries, Inc. which were admitted at hearing to represent nontaxable rental payments for real estate and the amounts paid to the various named individuals which amounts were held to be nontaxable herein (see, Conclusion of Law "D"). In view of the foregoing, only that portion of the equipment rental account representing payments to B.A.H.L. may potentially be subjected to tax. Review of petitioner's Exhibit "2" (cash disbursements journal) reveals that such payments to B.A.H.L. totalled \$2,530,000.00 for the audit period (see, Schedule "A" appended hereto).

G. With respect to the taxability of the payments to B.A.H.L., subdivision (a) of section 1105 of the Tax Law imposes a sales tax on "the receipts from every retail sale of tangible personal property". Section 1101(b)(5) defines a "sale" to include any "rental", which in turn is defined by the Commissioner's regulations to mean "all transactions in which there is a transfer of possession of tangible personal property without a transfer of title to the property" (20 NYCRR 526.7[c][1]). The transfer of possession may be "actual or constructive" and may consist of "the right to use, or control or direct the use of" the transferred property (20 NYCRR 526.7[e][former(3)]).

H. Petitioner's claim that the payments at issue and its use of B.A.H.L.'s equipment did not constitute a rental subject to tax is rejected (see____, Matter of Ormsby Haulers, Inc. v. Tully, 72 AD2d 845). It is clear that Cedar Brook completely directed the time, place and manner of the use of the equipment and that the equipment was operated by Cedar Brook's own drivers. Such a situation is a "transfer of possession" with the right to "use, control or direct the use of" the transferred property thus constituting a rental subject to tax. The assertion that a joint venture existed is unpersuasive in light of the evidence considered in its totality. There were no specifics presented concerning the division of profits and expenses or any other aspects of the alleged joint venture. It appears that in carrying out its contracts petitioner simply used at its discretion the equipment purchased and owned by B.A.H.L. Likewise, the assertions of the existence of a

transportation service or of a subcontracting arrangement between the two entities is simply not supported by the evidence. Although a purpose was not clearly articulated, it is undisputed that Mr. DeBremont chose to organize his business operations using two separate entities. It is presumed that some legitimate advantage resulted and petitioner may not now escape any concomitant adverse results (i.e., taxability) flowing from this business decision (see, Matter of Ormsby Haulers, Inc. v. Tully, supra; Matter of 107 Delaware Assoc. v. State Tax Commn., 64 NY2d 935). Accordingly, the Audit Division's determination that the payments to B.A.H.L. were subject to tax as payments for the rental of equipment is sustained. However, the subject assessment must be reduced in accordance with Conclusion of Law "F".

I. Finally, petitioner's request for a refund of use tax plus interest (see ___, Finding of Fact "6") is time barred under Tax Law § 1139(c). Said section of the Tax Law provides for refunds or credits for taxes paid under Articles 28 and 29 where applications therefor are filed within three years of the date payment was due, or within two years after payment was made. Here, the audit period ended on May 31, 1983 and petitioner's consent and payment were made on November 29, 1983. Hence, the latest time for filing a claim for refund under Tax Law § 1139(c) for any of the periods in question expired on June 20, 1986 (three years from the date a return and remittance were due for the last quarterly period covered by the audit). Since petitioner consented to and paid the tax and did not thereafter file or otherwise make a claim for refund until the commencement of proceedings herein (October 21, 1986), petitioner is time barred in its claim.

J. The petition of Cedar Brook Contracting Corp. is hereby granted to the extent indicated in Conclusions of Law "D" and "F"; the Audit Division is directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on March 20, 1984 accordingly; and that, except as so granted, the petition is in all other respect denied.

DATED: Albany, New York
October 6, 1988

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE

SCHEDULE "A"

PAYMENTS TO B.A.H.L.
(Per Petitioner's Exhibit "2")

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>	
12/3/79	\$ 14,000.00	12/2/80	\$ 20,000.00	2/9/82		\$
25,000.00						
12/6/79	6,000.00	12/11/80	25,000.00	2/26/82		
25,000.00						
12/10/79	60,000.00	12/31/80	25,000.00			
12/28/79	5,000.00			3/5/82		
25,000.00						
		1/15/81	25,000.00	3/12/82		
25,000.00						
1/7/80	10,000.00	1/30/81	20,000.00	3/26/82		
25,000.00						
1/11/80	9,000.00			3/31/82		
25,000.00						
1/22/80	5,000.00	2/17/81	25,000.00			
1/31/80	15,000.00	2/27/81	15,000.00	4/9/82		
20,000.00						
				4/22/82		
20,000.00				4/27/82		
20,000.00						
2/13/80	10,000.00	3/5/81	25,000.00			
2/26/80	10,000.00	3/11/81	25,000.00	5/11/82		
25,000.00						
		3/26/81	30,000.00	5/26/82		
20,000.00						
3/6/80	10,000.00					
3/13/80	10,000.00	4/2/81	25,000.00	6/9/82		
20,000.00						
3/26/80	25,000.00	4/8/81	20,000.00	6/25/82		
20,000.00						
		4/13/81	68,000.00	6/26/82		
20,000.00						
4/8/80	10,000.00	4/29/81	25,000.00			
4/17/80	10,000.00			7/8/82		
20,000.00						
		5/8/81	25,000.00	7/15/82		
20,000.00						
5/1/80	8,000.00			7/28/82		
20,000.00						
5/7/80	25,000.00	6/12/81	25,000.00			
5/15/80	15,000.00	6/26/81	25,000.00	8/6/82		
15,000.00						
5/29/80	10,000.00					
		7/10/81	25,000.00	9/1/82		

30,000.00				
6/5/80	15,000.00	7/24/81	20,000.00	9/9/82
20,000.00				
6/12/80	20,000.00			9/21/82
20,000.00				
		8/5/81	25,000.00	
7/10/80	30,000.00	8/26/81	25,000.00	10/5/82
20,000.00				
7/22/80	40,000.00			10/12/82
20,000.00				
7/30/80	35,000.00	9/3/81	20,000.00	
		9/17/81	25,000.00	11/3/82
50,000.00				
8/8/80	25,000.00	9/30/81	25,000.00	11/10/82
25,000.00				
8/22/80	10,000.00			11/30/82
30,000.00				
8/28/80	15,000.00	10/13/81	25,000.00	
		10/28/81	25,000.00	12/3/82
25,000.00				
9/4/80	25,000.00			12/9/82
20,000.00				
9/19/80	15,000.00	11/5/81	25,000.00	12/23/82
20,000.00				
9/30/80	20,000.00			
		12/1/81	25,000.00	1/5/83
30,000.00				
10/1/80	20,000.00	12/4/81	25,000.00	1/26/83
20,000.00				
10/9/80	25,000.00	12/7/81	25,000.00	
10/16/80	15,000.00	12/29/81	25,000.00	2/1/83
25,000.00				
10/30/80	25,000.00			2/16/83
20,000.00				
		1/6/82	25,000.00	2/23/83
30,000.00				
11/7/80	30,000.00	1/18/82	25,000.00	
11/20/80	25,000.00			

SCHEDULE "A"

PAYMENTS TO B.A.H.L.
(Per Petitioner's Exhibit "2")

<u>Date</u>	<u>Amount</u>
3/3/83	\$ 25,000.00
3/11/83	20,000.00
3/21/83	20,000.00
3/29/83	25,000.00

- 11 -

4/11/83	30,000.00
4/14/83	25,000.00
4/22/83	20,000.00
4/26/83	30,000.00
5/20/83	10,000.00
5/27/83	20,000.00
5/31/83	20,000.00

Total Paid 12/79 - 5/83 = \$ 2,530,000.00